IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Petition Nos.19401 to 19410/04, 20676 to 20681/04, 22268 to 22277/04, 31510 & 31561/04, 26807/05 and 33503 of 2006
and
WPMP Nos.23349/04, 40562 to 40571/04, 24891 to 24896/04, 38244/04, 2135 & 29253/05, 11920 to 11924/06 and WVMP No.2114 of 2005

P.M.Mari ... Petitioner in W.P.19401/04
B. Parthiban ... Petitioner in W.P.19402/04
P. Porchezhian ... Petitioner in W.P.19403/04
G. Paulchamy ... Petitioner in W.P.19404/04
S. Antonyraj ... Petitioner in W.P.19405/04
A. Muruganandam ... Petitioner in W.P.19406/04
M.S. Manimaran ... Petitioner in W.P.19407/04
T. Venkatesh ... Petitioner in W.P.19408/04
A. Mohamed Ali Jinnah ... Petitioner in W.P.19409/04
S. Lakshmanan ... Petitioner in W.P.19410/04
A. Senthilkumar ... Petitioner in W.P.20676/04
S. Sivakumar ... Petitioner in W.P.20677/04
S. Ganesamoorthy ... Petitioner in W.P.20678/04
V. Kuppusamy ... Petitioner in W.P.20679/04
N. Murali ... Petitioner in W.P.20680/04
N. Kamaraj ... Petitioner in W.P.20681/04
R. Manivannan ... Petitioner in W.P.22268/04
R. Sengodan ... Petitioner in W.P.22269/04
S. Karunakaran ... Petitioner in W.P.22270/04
P.Natarajan ... Petitioner in W.P.22271/04
M.S. Kannan ... Petitioner in W.P.22272/04
K. Sivaprakasam ... Petitioner in W.P.22273/04
K. Sekar ... Petitioner in W.P.22274/04
V. Loganathan ... Petitioner in W.P.22275/04
D. Sampathkumar ... Petitioner in W.P.22276/04
M. Aythan ... Petitioner in W.P.22277/04
Tamilnadu Rural Development Engineers Association, rep by its General Secretary Cuddalore ... Petitioner in W.P.31510/04

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S. Maruthapandian ... Petitioner in W.P.31561/04

1.P.M. MAri
2.B. Parthiban
3.G. Paulchamy
4.S. Anthoniraj
5.A. Muruganandam
6.M.S. Manimaran
7.T. Venkatesh
8.A. Mohamed ali Jinnah
9.S. Lakshmanan
10.R. Sengodan
11.M.S. Kannan
12.K. Sivaprakasam
13.K. sekar
14.D. Sampath Kumar
15.R. Manivannan
16.S. Ganesamoorthy ... Petitioner in W.P.26807/05

T. Venkatesh ... Petitioner in W.P.33503/06

vs.

1. The State of Tamil Nadu,
rep. by the Secretary,
Rural Development Department,
Fort St. George, Chennai-9. ... ISt Respondent in all W.Ps

2. The Director of Rural Development
Panagal Buildings, IV Floor,
Saidapet, Chennai-15. ... 2nd Respondent in all Petitions

4. The Managing Director,
T.N. Water Supply and Drainage Board,
Kamarajar Salai,
Chennai 600 005. ... 4th Respondent in W.P.Nos.19401, 19402, 19404 to 19410/04, 22268 to 22276/04 and 3r Respondent in W.P.31561/04 and 26807/05

3. S.Aruchamy, Assistant Engineer (RD),
Udumalapet Panchayat Union,
Coimbatore District. ... 3rd Respondent in W.P.19401/06, and 4th Respondent in W.P.31561/04. 26807/04

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R. Pounrajan
Assistant Engineer (RD)
Virudhunagar Panchayat Union
Virudhunagar district ... 3rd respondent in W.P.19402/04 & 5th Respondent in W.P.26807/04

(R3 impleaded as per order of Court dated 20.8.04 in W.P.M.P.28763/04)

V. Muniraju
Assistant Engineer (RD)
P.M.G.S.I. District,
Rural Development Agency
Collectorate, Erode.
R3 impleaded as per order of this Court dated 20.8.2004 in w.P.M.P.28764/04 ... 3rd Respondent in W.P. 19403/04

P. Neelamegam
Assistant Engineer (RD)
Rural Development Sub Division
Madurai.
R3 impleaded as per order of this Court dated 20.8.2004 in w.P.M.P.28765/04 .. 3rd Respondent in W.P.19404/04 and 6th respondent in W.P.26807/04

R. Chinnaveeran
Assistant Engineer (RD)
Rural Development Sub division,
Usilampatti, Madurai.

R3 impleaded as per order of this Court dated 20.8.2004 in w.P.M.P.28766/04 ... 3rd Respondent in W.P.19405/04 & 7th Respondent in W.P.26807/04

G. Sivasami
Urban Engineer
Narikudi Panchayat Union,
Virudhunagar ... 3rd Respondent in W.P.19406/04

R3 impleaded as per order of this Court dated 20.8.2004 in W.P.M.P.28767/04

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A.V. Rajesh,
Assistant Engineer (RD)
O/o. Block Development Officer
Ellapuram Panchayat Union
Tiruvallur District

R3 impleaded as per order of this
Court dated 20.8.2004 in
w.P.M.P.28768/04 ... 3rd respondent in
W.P.19407/04

Y.K. Yokaraj
Assistant Engineer
RD PMGSY Sub Diviison I
Rural Development Agency
Karur.

R3 impleaded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28769/04 ... 3rd Respondent in
W.P.19408/04

R. Venkateswaran
Assistant Engineer (RD)
O/o. The Assistant Executive Engineer
PMGSY Sub division,
Nagapattinam

R3 impleaded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28770/04 ... 3rd Respondent in
W.P.19409/04

K. Prabhakar
Assistant Engineer (RD)
PMGSY, district rural Development Agency
Villupuram. ... 3rd Respondent in W.P.19410/04
8th Respondent in W.P.26807/04

R3 impleded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28771/04

A. Kuttalingam,
Assistant Engineer (RD)
O/o. The Assistant Executive Engineer
PMGSY, Sub Division

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Nagercoil. ... 3rd Respondent in w.P.20676/04
R3 impleaded as per order of this
Court dated 20.8.2004 in
w.P.M.P.28772/04

P. Madhu,
Assistant Engineer (RD)
Uthangarai Panchayat Union,
Krishnagiri.

impleaded as per order of this
Court dated 20.8.2004 in
w.P.M.P.28773/04 ... 3rd Respondent in
W.P.20677/04

S. Arumugam
Assistant Engineer (RD)
Morappur, Panchayat Union
Dharmapurid District

R3 impleaded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28774/04 ... 3rd Respondent in
W.P.20678/04

R. Harikrishnan
Assistant Engineer (RD)
Anna Gramam Panchayat Union
R3 impleaded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28775/04 ... 3rd Respondent in
W.P.20679/04

M. Kavitha
Assistant Engineer (RD)
O/o. The Assistant Executive Engineer
Dindigul.
R3 impleaded as per order of this
Court dated 20.8.2004 in
W.P.M.P.28776/04 ... 3rd Respondent in
W.P.20680/04

V. Rajavel
Assistant Engineer (RD)
O/o. The Block Development Officer
St. Thomas Mount Panchayat Union,
Kancheepuram District
R3 impleaded as per order of this

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Court dated 20.8.2004 in
W.P.M.P.28777/04 ... 3rd Respondent in
W.P.20681/04

D. Ramasamy A.E
Panchayat Union
Thiruthuraipoondi

R3 Impleaded as per order of this
Court dated 4.10.2004 in
W.P.M.P.32739/04 ... 3rd Respondent in
W.P.22268/04

S. Muthusamy
Assistant Engineer
Panchayat Union
Omalur,
Salem District.

R3 impleaded as per order of this
Court dated 4.10.2004 in
W.P.M.P.32740/04 ... 3rd Respondent in
W.P.22269/04

V. Suresh
Assistant Engineer
PMGSY Sub Division
DKDA
Thiruvarur

R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32741/04 ... 3rd Respondent in
W.P.22270/04

P. Selvaraj
Assistant Engineer
Panchayat Union RD
Nillakkottai, Dindigul.

R3 impleded as per order
dated 4.10.2004 in
W.P.M.P.32742/04 ... 3rd Respondent in
W.P.22271/04

S. Thanikachalam
Assistant Engineer RD
Panchayat Union
Vellore.

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R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32743/04 ... 3rd Respondent in
W.P.22272/04

S. Sadaiappan
Assistant Engineer (RD)
Panchayat Union
Thiruppathur
Sivaangari

R3 impledaed as per order
dated 4.10.2004 made in
W.P.M.P.32744/04 ... 3rd Respondent in
W.P.22273/04

P. Sundarapandian
Assistant Engineer
District Executive Engineer
Office Rural Development
sub Division
Thiruppathur, Vellore

R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32745/04 ... 3rd Respondent in
W.P.22274/04

C. Sekthimurugan
Assistant Engineer (RD)
Panchayat Union,
Thiruvadanai
Ramanathapuram District
R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32746/04 ... 3rd Respondent in
W.P.22275/04

E. Sivakumar
Assistant Engineer (RD)
Panchayat Union,
Thalai Nagar,
Nagapattinam

R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32747/04 ... 3rd Respondent in
W.P.22276/04

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M. Madasamy
Sundararaj
Assistant Engineer (RD)
PMGSY District Rural Development
Agency, Thirunelveli.

R3 impleaded as per order
dated 4.10.2004 in
W.P.M.P.32748/04 ... 3rd Respondent in
W.P.22277/04

2. The Secretary
Personnel and Administrative Reforms
(P & AR) Department,
Fort St. George, Chennai-9.

3. The Secretary
Tamilnadu Public Service commission
Government Estate,
Anna Salai, chennai.

4. The Director of Rural Development
Chennai-15. ... respondent 2 to 4 in
W.P.31510/04

WP.19401/04:- Petition under Article 226 of the Constitution of Ind
for the issuance of a writ of Mandamus as stated therein.

Mandamus directing the respondents to abosorb the Petitioner
Assistant Engineer Rural Development Department from the date of h
appointment pursuant to the directions in g.O.MS.No.102 dat
25.5.1998 issued by the Ist respondent (in W.P.19401, 19402, 1940
19404, 19405, 19406, 19407, 19408, 19409 & 19410/04) 20676,
20681/04, 22268 to 22277/04.

Mandamus directing the Ist and 4th respondent herein to repatria
Assistant Engineer/ Assistant Executive Engineer of the prese
highways Department Agricultural Engineering Department and Dharmapu
District Development Corporation possessing a Bachelor's Decree of i
equivalent is Mechanical and Agricultural engineering and all Juni
Engineers Assistant Engineers/ Assistant Executive Engineers of vario
of the Technical Department who are an Deputation / on contract bas
and serving in the Rural Development Department, beyond five years
their respective parent Department forthwith and maintain the cad
strength between Assistant Engineer/ Junior Engineers of the Rur
Development Department as stipulated in the Rules in force.
(in W.P.31510/04)

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certiorarified Mandmus calling for the records of the 2nd responde in RC.No.32949/04 EE1/dated 18.9.2004 and quash the same and direct h to retain the petitioner as AEE with the Rural Development Departme (in W.P.31561/04)

ceritorarified Mandamus or any other appropriate Writ calling for t records relating to the letter issued by the Managing Directo Tamilnadu water supply and Drainage Board, the 3rd respondent here made in his office letter No.C2/HO/EE/68375/2004-17 dated 27.12.20 quash the same in so far as the petitioner are concerned a consequently direct the respondents herein to give effect to the ord of absorption issued by the 2nd respondent, the Director of Rur Development, Chennai made in his office proceedings No.90329/98/Ee dated 17.3.99 by treating the subsequent order issued by him in h office proceedings No.90329/98/EE.2 dated 2.7.1999 as void so as enable the petitioners herein to get all the consequential, service a monetary benefits accrued on account of absorption within a short da that may be fixed by this Honourable Court. (in w.P.26807/04)

(i) Para 2 of Notification IV of G.O.Ms.No.15 Rural Development (E Department dated 25.1.2000 issued by the Secretary to Government, Rur Development Department, Chennai-9, the Respondent herein in givi retrospective effect of the rule from 26.9.1997 and

(ii) In so far as the non inclusion of Deputationist from TW Board as one of the method of appointment for recruitment to the po of Assistant Engineer in Rule 3 of the Adhoc rules issued G.O.Ms.No.15, Rural Development (E1) Department dated 25.1.2000 und the heading of Appointment, as null andd void and ultra vires t constitution of India and for consequential direction directing t respondent herein to include the Deputationist from TWAD Board as c fo the method of appointment is Rule 3 of the adhoc rules governi Assistant Engineer post in Rural Development Department and absorb t petitioenr as Assistant Engineer in Rural Development Department wi all consequential service and monetary benefits. (in W.P.33503/06)

For petitioners in WP Nos.19402, 19406, 19407 and 19408 of 2004 : Mr.Sanjay Mohan, for Mr.K.Rajkumar

For Petitioners in WP Nos.19410, 20678, 22268 and 22273 of 2004 : Ms.R.Vaigai, for Mr.G.Rajesh.

For Petitioner in WP No.33503 of 2006 : Mr.AL.Somayaji, Senior Counsel for Mr.K.Rajkumar

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For Petitioner in WP Nos.19404, 19405, 19409 and 19401/2004 : Mr.AL.Somayaji, Senior Counsel for Mr.S.Govindaprasad

For Petitioner in WP Nos.22269, 22272, 22274 and 22276 of 2004 : Mr.V.K.Muthusamy, Senior Counsel for Mr.R.Muthukrishnan

For Petitioner in WP Nos.20676 to 20681/04 : Mr.R.Syed Mustafa

For Petitioner in WP No.31510 of 2004 : Mr.C.Selvaraju, Senior Counsel for Mr.Srinath Sridevan

For Petitioner in WP Nos.19403, 22270, 22271, 22275, 22277 & 31561/04 : Mrs.Hema Sampath

For R-3 in WPs.19401 to 19410/04, 20676 to 20681/04: Mr.R.Thiyagarajan, 26807/05 and for petitioner in WVMP 2114 of 2005 Senior Counsel. for Mr.Ravi

For TWAD Board : Mr.Sudharshana Sundhar

For State (in all matters): Mr.R.Viduthalai, Advocate General, assisted by Mr.P.Subrmanian, Govt. Advocate

COMMON JUDGMENT

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Petitioners, working in the Rural Development Department deputation from Tamil Nadu Water Supply and Drainage Board (in sho TWAD Board), pray to issue a writ of mandamus, directing t respondents - Secretary, Rural Development Department (in short R. Department), and the Director, Rural Development, Chennai, to abso them as Assistant Engineers, R.D. Department, from the date of the appointment pursuant to the directions in G.O.Ms. No.102, dat 25.5.1998, issued by the Government of Tamil Nadu.

II. Some of the petitioners seek to quash the letter of t TWAD Board, dated 27.12.2004, and pray for a consequential direction give effect to the order of absorption issued by the Director of R. made in his proceedings dated 17.03.1999. They also pray to hold th

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his order dated 02.07.1999, cancelling absorption of A.Es. of TW Board in R.D. Department, is void.

III. In one Writ Petition, viz., W.P. No.35303 of 2006, t petitioner has prayed for a writ of declaration, declaring,

(a) para 2 of Notification IV of G.O. Ms. No.15, R. (E1) Department, dated 25.01.2000, giving retrospective effect to t Ad hoc Rules from 26.09.1997, as void,

(b) non-inclusion of deputationists from TWAD Board one of the methods of appointment for recruitment to the post Assistant Engineer in Rule-3 of the ad hoc Rules in G.O.Ms. No.15 void.

Apart from the above relief, the petitioner also seeks for consequential direction to include the deputationists from TWAD Boa as one of the methods of appointment in Rule 3 and absorb him Assistant Engineer in the R.D. Department with all consequenti benefits.

IV. In W.P. No.31510 of 2004, The Tamil Nadu Rural Developme Engineers' Association through its General Secretary P.Ravikumar, pra for the issuance of a writ of mandamus, directing the Secretary Government, R.D. Department, and Director of R.D., Chennai-15, repatriate the Assistant Engineers/Assistant Executive Engineers of t present Highways Department/Agricultural Engineering Department a Dharmapuri District Development Corporation, possessing a Bachelor Degree or its equivalent in Mechanical and Agricultural Engineerin and all Junior Engineers, Assistant Engineers/Assistant Executi Engineers of various other Technical Departments, who are deputation/on contract basis and serving in the R.D. Department beyo five years, to their respective parent Departments forthwith a maintain the cadre strength between Assistant Engineers/Juni Engineers of the R.D. Department as stipulated in the Rules in force.

2. Since the reliefs sought for in all these Writ Petitio are interconnected and the W.Ps. having been filed by two sets individuals; viz., deputationists from other departments to R. Department on the one hand, seeking absorption and promotion in t present Department; and the insiders/in-service personnel of the R. Department on the other hand, claiming repatriation of t deputationists to their respective parent Departments; they are bei disposed of by the following common judgment.

3. As the Writ Petitions filed by the deputationists conta common pleas, we cull out the facts from some of the Writ Petitions:-

A. For convenience, at first, we shall refer the case P.M.Mari, petitioner in W.P. No.19401 of 2004.

He is an Engineer with B.E. in Civil Engineering. He join the TWAD Board on 10.06.1985 as Assistant Engineer. In 1997, he w sent on deputation to the R.D. Department when 'Engineering Wing' w started there. This was under G.O. Ms. No.263, dated 27.12.199

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issued by the Government - first respondent. Additional technic posts sanctioned under the said Government Order were directed to filled up on deputation/by transfer of service basis for a period three years as temporary measure. At present, he is working Assistant Engineer in the R.D. Department. The Director of R.D Chennai-15, following the notification dated 21.01.1997, requested t Collectors to issue orders to individuals who had been selected fr the willing candidates from the Highways, Rural Works Department a TWAD Board. Persons, who went on deputation, were found eligible a suitable based on their qualifications. Along with the petitioner, number of persons from the TWAD Board also came to the R.D. Departme on deputation. In G.O. Ms. No.102, R.D. Department, dated 25.05.199 the Government directed the Director to report about permanent absorbing Assistant Engineers from other Technical Departments giving them weightage for the service put in by them in the respective parent departments. Based on such direction, ad hoc rul were framed by the Government for the persons holding temporary post These rules were based on the earlier Government Orders in G.O. M Nos.263 and 102. The Rule relating to the appointment contemplated t following,

(a) by direct recruitment;

(b) recruitment by transfer from overseer in the RD Department;

(c) the ratio for appointment to the post by direct recruitment and recruitment by transfer shall be 1:1.

According to the petitioner, he comes within the category of dire recruitment which contemplated only a degree in Civil Engineering amo other things. G.O.Ms. No.15, dated 25.01.2000, shall be deemed to ha come into effect from 25.05.1998. Even on 17.3.1999, the Director h passed an order for permanent absorption of 125 Assistant Enginee working on deputation from various other departments into the Department. But, on 2.7.1999, this order was cancelled by him as t Managing Director of the TWAD Board had refused to accept the propos for absorption of persons deputed from the Board by his letter dat 15.4.1999. After sometime, the Director was informed by the Managi Director, TWAD Board, on 22.07.1999, that the Board was willing for t permanent absorption of the Assistant Engineers on deputation by t R.D. Department. Willingness was conveyed to the fir respondent/Government also. In spite of those proceedings, there was lot of confusion in the office of the Director, R.D., whereupon, t Director issued proceedings dated 10.03.2004 to the District Collecto asking them to give particulars about the Assistant Engineers who ha been recruited by the TNPSC to enable him to promote them as Assista Executive Engineers. The petitioners and other similarly plac persons gave representations to the respondents, requesting them include their names in the panel for promotion. So far, they have n received any reply. They apprehend that promotion would be ma without including their names. Hence, they filed several wr petitions, seeking for a direction to the respondents to absorb them

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Assistant Engineers in the R.D. Department from the date of the appointment pursuant to the direction in G.O. No.102 dated 25.05.19 issued by the first respondent.

B. P.M.Mari and others joined together and filed W. No.26807 of 2005 making similar contentions to those raised in W. No.19401 of 2004.

C. In W.P. No.33503 of 2006, filed by T.Venkatesh, Assistant Engineer directly recruited in TWAD Board, now in the R. Department, it is stated that the Government of Tamil Nadu, with a vi to have a separate Engineering Wing in the R.D. Department creat certain posts. One such post is Assistant Engineer or Additional Uni Engineer. To meet the immediate requirement and development of t Engineering Wing, the Government directed to draw Assistant Enginee by way of deputation from various Technical Departments including TW Board as the same has been considered as one of the Technic Departments. Accordingly, options were called for by the Director Rural Development through the respective Collectors who in tu obtained the same from the Superintending Engineers of the TWAD Boar The petitioner expressed his willingness to go on deputation. Sin January 1997, he has been working continuously till this date. T Government took a policy decision to absorb the deputationists a issued G.O.Ms. No.102, R.D. (EIV) Department, dated 25.05.199 wherein, it directed the Director of R.D. to explore the possibility absorbing all the deputationists in the R.D. Department. Though t said order was implemented initially, the same was cancelled 02.07.1999 on the ground of not giving consent by the TWAD Boar However, the said deficiency was made good by the succeeding Managi Director of the TWAD Board by sending two letters on 22.07.1999 a 12.10.1999, giving willingness for permanent absorption of their sta in the R.D. Department. On the basis of those letters, the petition was allowed to continue beyond the period of deputation. T petitioner and others were hoping that they would be permanent absorbed and given all service benefits, but, nothing has been done.

The Government framed ad hoc Rules for the post of Assista Engineers in the R.D. Department vide G.O. Ms. No.15, Rural Developme (E1) Department, dated 25.01.2000. The Rules had come into effect fr 26.09.1997. Paragraph No.3 of the Rules deals with the method appointment and it provides that the post of Assistant Engineer can filled by (a) Direct Recruitment; (b) Recruitment by transfer; and (Ratio of 1:1 provided for Direct Recruitment and recruitment transfer. However, the Rules do not take in the deputationists und its method of appointment and thereby the right of the petitioner continue in the Department is curtailed. Further, non-inclusion deputationists in the method of appointment though they have be working for the development of the Engineering Wing in the R. Department violates Article 14 of the Constitution.

The petitioner entered the R.D. Department long before t

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issue of ad hoc rules, that being so, the retrospective effect of t rules from 26.09.1997 affects his right very much, because, even befo passing of orders, an absorption order has been issued, subject framing of rules. Such being the case, the authorities ought to ha made a provision to include the deputationists as one of the methods appointment so as to give effect to the orders already passed in favo of the petitioner and others. Hence, the ad hoc rules are ultra vir the Constitution of India.

3(a). Now, we shall briefly narrate the case of t petitioner-association (in-service personnel of the R.D. Department) W.P. No.31510 of 2004.

According to the General Secretary of the petitione Association, R.D. Department has been executing several State Centrally sponsored Anti-Poverty Programmes besides executi development works out of the funds of Panchayat and Panchayat Unions employing technical personnel of the erstwhile Highways & Rural Wor Departments on service lend basis upto 1996. Consequent to t Constitutional 73rd Amendment, introducing new Tamil Nadu Panchaya Act, 1994, and of the fact that several new schemes to be implemente it became inevitable on the part of the Government to create a separa Engineering Wing for the R.D. Department. By G.O.Ms. No.263, Department, dated 27.12.1996, the Government decided to set up separate Engineering Wing for the R.D. Department. By virtue of t said Government Order, new posts were created in the R.D. Departmen However, no Service Rules were framed and notified for appointment those posts at the relevant time (during 1996). Hence, the posts we initially filled up by drawing personnel from other technic departments of Government of Tamil Nadu like TWAD Board, Agricultur Engineering Department, P.W.D, etc. including Highways Department ' Deputation Basis' as a temporary measure. According to the petitione the above arrangement was very unsatisfactory since the deputationis had no commitment or motivation for executing the various time-bou schemes of the R.D. Department. The Association of Tamil Nadu Highwa Engineers' opposed the creation of a separate 'Engineering Wing' und the R.D. Department, claiming that all the posts created by virtue G.O. Ms. No.263 be earmarked only for Engineers of the erstwhi Highways and Rural Works Department.

Certain personnel on deputation basis at various points time since 1996 opted for repatriation to their parent Departments various lending Departments could not sponsor the required number eligible Engineers willing to serve in the R.D. Department. T Government decided to fill up 200 posts of AE (RD) by Dire Recruitment through TNPSC by notification dated 26.09.1997. T Government also framed necessary Service Rules in G.O. Ms. No.15 dat 25.01.2000. The constitutional validity of both G.O. Ms. Nos.102 a 15 were challenged before the Tamil Nadu State Administrative Tribun by a group of individuals and by the Association of Tamil Na Engineering Graduates, however, both the Government Orders were uphe

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by the Administrative Tribunal. The personnel working in the R. Department were not given proper promotions. On the other hand, t deputationists / 'on contract basis personnel' are occupying vario posts of AE/AEEs without any specific and valid order against the Rul in Force.

There are nearly 20 AEs/AEEs, who have been deputed fr Highways Department, Agricultural Engineering Department and Dharmapu District Development Corporation, belonging to Government of Tam Nadu, with Bachelors Degree qualification (B.E./B.Tech) entrusted wi the execution of various Panchayat Union Works in the R.D. Departmen They are not fully competent enough to execute / supervise the works per specifications and exercise quality control over the work Moreover, the qualification possessed by them is against the provisio contained in the Service Rules framed by the Government of Tamil Na under Article 309 of the Constitution of India, hence, their continu presence in the R.D. Department is illegal and against the interests the R.D. Department and general public. The petitioner-associati made several representations to various authorities in the Governme of Tamil Nadu and to the Secretary, Tamil Nadu Public Servi Commission, complaining about the illegality being committed. Simil persons, unqualified and not fit enough to continue, are al continuing from TWAD Board and Tamil Nadu State Constructi Corporation and they are to be repatriated to their respective pare Departments. There are 295 Engineers (AEs/JEs) from various oth Engineering Departments of Government of Tamil Nadu, working in t R.D. Department 'on deputation' / 'on contract' basis as on 18.08.200 which is about 35-40% of the total sanctioned posts of AEs/JEs in t R.D. Department. Such a large number of 'deputationists' / ' contract personnel' are blocking the promotional avenues of the i service personnel in the R.D. Department. The continued presence nearly a large number of Engineers 'on deputation' / 'on contra basis' beyond legally permissible period is leading to the creation vested interests being developed by such 'deputationists' / ' contract personnel', thereby jeopardise the very purpose of t creation of a separate Engineering Wing in the R.D. Department f executing the Panchayat Union time-bound schemes sponsored by Central State Governments and also completely block the promotion opportunities available to the in-service Engineers of the R. Department including the members of the petitioner-association.

4. Though the State Government / first respondent (R. Department) has not filed counter affidavit in all the Writ Petition they highlighted their stand by filing counter affidavit in W. No.33503 of 2006. They explained the reason for formation 'Engineering Wing' exclusively for the R.D. Department by referring G.O. Ms. No.263 R.D. Department dated 27.12.1996. Based on the sam several Engineering personnel were drawn temporarily on deputati basis from other departments like Highways Department, Agricultur

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Engineering department, TWAD Board etc. However, this arrangement l to lot of operation problems, therefore, G.O. Ms. No.102, R.D. (E Department, dated 25.05.1998, was issued, whereby; clear instructio were issued to the Chief Engineer (Highways) to stop posting h personnel to the newly sanctioned posts. With regard to the claim the petitioner in W.P. No.33503 of 2006 that he was recruited by t TWAD Board, it is pointed out that TWAD Board is not a Governme Department but it is an independent body created under the Tamil Na Water Supply and Drainage Board Act, 1970. The petitioner is not Government Servant. If he wants to join in a Government Department, should either be recruited afresh through the Tamil Nadu Public Servi Commission (TNPSC) or through Employment exchange as specified in t Tamil Nadu State and Subordinate Service Rules. There is no other w of entering into the Government Service except through the said t ways specified. The petitioner is employed on contract basis accordance with Rule 11 of the State and Subordinate Service Rules.

In G.O. Ms. No.102, R.D. (E1) Department, dated 25.05.199 there was a direction to absorb Highways Department personnel only a not TWAD Board personnel. Even otherwise, the said Government Ord directed the Director, R.D., to explore the possibility or absorbi the deputationists from the borrowing department, hence, the questi of absorbing the deputationists from other departments is only possibility and not finality. The Director of R.D. absorbed Assista Engineers of other Departments provisionally by his proceedings dat 17.3.1999 without waiting for the Government's clearance. T absorption of personnel belonging to Highways Department and TWAD Boa was objected to by the respective Heads of Departments. The Direct of R.D., realising the infirmities in the absorption order, cancell the same by proceedings dated 02.07.1999. The petitioner was taken the R.D. Department only on contract basis and he has absolutely right to challenge the statutory rule which has been framed exclusive for the engineers of the R.D. Department. The petitioner has not be appointed from a Government Service; hence, his appointment is made 'contract basis'. The question of absorbing the deputationists is on a possibility and not finality. Even otherwise, the instructio issued in the Government Order are only for the personnel working Government Departments and not for those in statutory Boards Corporations. Further, the Government had not decided to absorb a the deputationists and had directed the Director of R.D. only explore the possibility of absorption. In the meanwhile, as ad h rules were framed, the orders issued on 25.05.1998 had become null a void and ceased to have any effect. Since the order of the Directo R.D., suffers from two infirmities, the Director himself withdrew t same within a period of four months. The Government have issued ad h rules for R.D. Engineering Service in G.O. Ms. No.15, R.D. Departmen dated 25.1.2000. According to the Service Rules, there are only t ways for entering into the service, viz., (a) Direct Recruitme through TNPSC and (2) recruitment by transfer from the category Overseer in the R.D. Department. There is no provision for absorbi

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employees of other organisations. Service Rules have overridi effects on G.O. Ms. No.102, R.D. Department, dated 25.5.1998, which only an executive order. The petitioner is not a Government Employ under the provisions contained in Fundamental Rules. He was employ on contract basis in accordance with Rule 11 of the State a Subordinate Service Rules and can be terminated by the Government wh the need for his services ceases. If the plea of the petitioner conceded to, it would amount to inflicting gross injustice to t unemployed engineering graduates and who are waiting for employme through the TNPSC.

The ad hoc Rules issued for the post of Assistant Engineer a not arbitrary and violative of Article 14 and 16 of the Constitution India as contended. The petitioner does not belong to R.D. Engineeri Service; hence, he has no locus standi to challenge the service rul as contained in G.O. Ms. No.15, R.D. Department, dated 25.01.2000. T petitioner appointed on contract basis from TWAD Board has therefore legal right to get absorbed in the borrowing Department.

5. The Managing Director, TWAD Board, has filed count affidavit in W.P. No.26807 of 2005, wherein, it is stated that, requested by the Director of R.D. Department, certain Engineers of TW Board were deputed to R.D. Department as per terms and conditions f appointment of personnel from the Public Sector Undertakings/Boards Government Services. While the Assistant Engineers of TWAD Board we working in the District Rural Development Agency on deputation basi the Director of R.D. issued orders in his proceedings dated 17.3.19 among other things, absorbing 57 Assistant Engineers belonging to TW Board in the R.D. Department, based on their exercise of option subje to certain conditions, pending framing of ad hoc rules for Tamil Na Rural Development Engineering Services. However, the Managi Director, TWAD Board, in his letter, dated 15.04.1999, informed to t R.D. Department that the said exercise of option is not acceptable the TWAD Board. Since the services of Assistant Engineers a essentially required for the current year work of the TWAD Board, t Managing Director, TWAD Board, requested the Director, R.D. Departmen to revert back all the Assistant Engineers to the TWAD Boa immediately. In those circumstances, orders issued for permane absorption of the 57 Assistant Engineers belonging to TWAD Board we cancelled by the Director of R.D. Subsequently, the Managing Directo in his letter dated 22.07.1999, informed the Director of the R. Department that TWAD Board is willing for the permanent absorption its Assistant Engineers. Based on the same, the Director, R.D., in h Circular dated 16.11.1999 ordered that the A.Es. of the TWAD Board m be retained in the R.D. Department till a final decision is taken the Government. Again, when the consent of the TWAD Board was soug for, considering the financial position, a letter was sent to t Director, R.D., in Managing Director's proceedings dated 27.12.200 informing that the Board is not in a position to accept any permane absorption of Board's AEs/AEEs in the R.D. Department. The TWAD Boa

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denied the allegation that the continuance of petitioners in the R. Department gives them a right to the post of Additional Uni Engineers. The Assistant Engineers deputed from TWAD Board have be working in the R.D. Department beyond the period of deputation f three years and their continuance in the said Department is subject the decision to be taken by the Director of R.D. / Government. Thou originally the M.D. consented for absorption, subsequently, taking no of various aspects including dearth of hands in the TWAD Board, conveyed his decision not to accept any permanent absorption of A.E in the R.D. Department.

6. Some of the petitioners filed a Rejoinder, reiterati their earlier stand. All of them denied the allegation of the R. Department and the TWAD Board that their employment was on contra basis. According to them, when the Government decided to absorb Uni Overseers who came on deputation from Highways and they were giv promotion as Assistant Engineers for 209 Blocks, it is arbitrary a discriminatory to deny the same benefit to the personnel from TW Board and the same would be violative of Articles 14 and 16 of t Constitution of India.

7. Persons, working in the R.D. Department, who are shown respondents, filed a reply affidavit, wherein, it is stated that TW Board is an undertaking of the Government of Tamil Nadu and the mode appointment relating to it is outside the purview of the TNPSC. T Government, in their letter dated 01.07.1997, and subsequent lette dated 15.2.2003, have clarified that the TWAD Board Assistant Enginee are appointed on contract basis and are not entitled for deputation p and allowance. When TWAD Board, which is the lending department, h not accepted for absorption, and the borrowing R.D. Department had al not agreed for absorption of AEs of TWAD Board, the petitioners have legal right to claim permanent absorption in the R.D. Department. the request of the writ petitioners viz., deputationists from TW Board, is considered, persons working in the R.D. Department and the promotional opportunities would be vitally affected. When the servi rules framed under Article 309 of the Constitution of India do n permit absorption from other Departments or Boards, the writ petitio filed by the deputationists are not maintainable. The Tamil Na Administrative Tribunal, in various orders, directed the Department promote the Assistant Engineers recruited for the R.D. Department a to stop deputation from other Departments contrary to statutory rule The said decision has become final and the same was not challenged anyone. Further, TWAD Board Engineers have not passed the Department Tests for promotion as Assistant Executive Engineers and they are sti on contract basis in the R.D. Department. In the statutory Rule, viz G.O. Ms. No.15, dated 25.01.2000, as there is no provision for the deputationists or persons appointed on contract basis to be absorbed Assistant Executive Engineers in the R.D. Department, they cannot cla

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promotion as Assistant Executive Engineers. In any event, the Direct of R.D. has no jurisdiction to absorb an Assistant Engineer from TW Board. For permanent absorption, the Government alone is the compete authority that too after consent of the M.D., TWAD Board. As per t law laid down by the Supreme Court, petitioners/deputationists have vested right of absorption in the R.D. Department. There is provision under the ad hoc Rules for appointment by transfer of servi from the TWAD Board or for absorbing A.Es. from other Departments.

8. With the above pleadings, we heard Mr.Sanjay Moha Ms.R.Vaigai, learned counsels; Mr.AL.Somayaji, Mr.V.K.Muthusam learned Senior Counsels; Mr.Syed Mustafa, learned counsel; appeari for writ petitioners; Mr.C.Selvaraju, Mrs.Hema Sampath, learned Seni Counsels; Mr.R.Thiyagarajan, learned Senior Counsel; for t respondents; Mr.Sudharshana Sundhar, learned counsel appearing for t TWAD Board; and Mr.R.Viduthalai, learned Advocate General for t State.

9. Now, let us decide the cases on hand with reference to fo major issues, raised by the respective sides, viz.,

(a) claim of the deputationists regarding their position the R.D. Department and substance in their plea for issui mandamus as prayed for by them;

(b) Validity or otherwise of the impugned Rules;

(c) discrimination alleged; and

(d) retrospective operation of the Rules.

Depending upon our decision on the above issues, we will determine t claim of the petitioner/Association in W.P. No.31510 of 2004.

10. Relating to the first issue, main contentions projected behalf of the petitioners/deputationists are as follows:-

(a) In view of the decision embodied in the proceedings dat 17.03.1999 and the willingness expressed by the TWAD Board by lette dated 22.07.1999 and 12.10.1999, it is obligatory on the part of t respondents to treat the deputationists as employees of the R. Department.

(b) TWAD Board, having made a decision in terms of Regulation 13 the TWAD Board Rules to the effect that the petitioners may hencefor become employees of the R.D. Department, can no longer go behind su decision.

(c) Equally, the R.D. Department, having acted upon the decision the TWAD Board, can not take a stand that absorption cannot be don All that remain is only the follow up action by the R.D. Department absorb the petitioners.

(d) The doctrine of legitimate expectation would come in operation by the conduct of the TWAD Board and the R.D. Department regard to the absorption of the Petitioners into the services of t R.D. Department.

(e) The reason given for non-absorption based upon non-availabili

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of Rules would not be available to the respondents since Service Rul were framed much after the Executive decision taken to absorb them.

(f) It would not lie in the respondents to now claim that there dearth of hands in the TWAD Board in the light of TWAD Board's lett dated 30.11.2004 to the effect that absorption may be done.

(g) The TWAD Board and the R.D. Department are now estopped fr pleading that absorption cannot be made.

(h) The plea that absorption can be done only when Rules are fram would not arise since prior to the framing of the Rules Executi decision has the force of law.

11. Contentions by the respondents:-

(i) As per the Board's proceedings, for continuing deputati beyond 3 years, the matter should be placed before the Board f concurrence.

(ii) Further proceedings show that the deputation pay would paid for a maximum period of 3 years and the period of deputation wou also be for a maximum period of 3 years. It was already made cle that the deputationists can be recalled by the lending authority at a time at its discretion. All the petitioners are aware that t deputation period can only be for a maximum period of three years a unless and until the M.D. gives concurrence, absorption cannot claimed by the TWAD Board Engineers.

(iii) As per G.O. Ms. No.263, R.D. Department, dat 27.12.1996, the policy of the Government was only to take Engineers deputation from various Departments, and the letter addressed to t TWAD Board makes it clear that only Engineers were recruited ' deputation basis' for the newly formed Department.

(iv) Even in G.O. Ms. No.102, R.D. Department, dat 25.05.1998, the Government directed the Director to explore t possibility and report to it regarding permanent absorption and had n delegated its powers to permanently absorb Assistant Engineers by t Director of R.D..

(v) As per proceedings dated 17.3.1999, the Director of R. had passed an order absorbing 57 TWAD Board Engineers subject to t condition of pending framing of ad hoc rules / Service Rules of Tam Nadu Rural Development, therefore, it was a conditional absorption a the Director had no jurisdiction to pass the order dated 17.03.19 without the concurrence of the Managing Director, TWAD Board.

(vi) Considering dearth of hands, a decision was taken by t lending authority/TWAD Board, expressing its unwillingness f absorption of its engineers in the R.D. Department, hence, there cann be a mandamus compelling the Government to permanently absorb the TW Board Engineers in the R.D. Department against the said poli decision.

(vii) Inasmuch as the Engineers in the TWAD Board were n recruited through the TNPSC, they cannot claim absorption in the R. Department since A.Es. in the R.D. Department come within the purvi

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of TNPSC.

(viii) When the statutory rule does not provide for absorpti as one of the methods of appointment, the TWAD Board Engineers have right to claim absorption; therefore, all the Writ Petitions filed the TWAD Board Engineers are liable to be dismissed.

12. Perused all the relevant materials and careful considered the rival contentions.

13. At the foremost, let us consider the proceedings of t TWAD Board, various orders passed by the Government in respects absorption, cancellation, etc.

B.P. Ms. No.71, dated 19.03.1990, speaks about TWAD Board guidelines regarding absorption and powers of the Managing Directo As per Clause-10, the M.D. is empowered to sanction deputation officers to other organisations upto the level of Executive Enginee for a period of three years. For continuance of deputation beyo three years, the matter should be placed before the Board. The M.D. also delegated with powers to give concurrence for the absorption TWAD Board employees upto the level of E.Es. in other organisations.

B.P. No.342, dated 06.11.1996, speaks about the terms a conditions governing deputation of TWAD Board's employees. Clause-10 the Board's proceedings speaks about the 'period of Deputation', as p which, the period of deputation will, unless otherwise specifical stated, be three years. It further states that the deputationists ma however, be recalled by the lending authority at any time at i discretion subject to certain conditions, viz., the deputation wi commence on the date on which the deputationists hands over charge his post in Board service or under the previous Foreign Employer, the case may be, and on the date he assumes charge of a post in TW Board.

The order passed by the Government in G.O. Ms. No.263, R. Department, dated 27.12.1996, is very relevant. It is seen that, the letters dated 31.07.1996 and 12.09.1996, the Director of R. pointed out that technical supervision of works related to R. Department is inadequate as currently there is only one post of Uni Engineer in the Panchayat Union and that the works taken up p Panchayat Union exceed Rs.1.5 crores and this requires close technic monitoring supervision and control to ensure timely execution of wor as well as implementation quality. In those circumstances, f strengthening the technical wing in the R.D. Department, the Direct approved for a full fledged office of a Divisional Engineer / Executi Engineer in each District, a sub division headed by Assista Divisional Engineer / Assistant Executive Engineer in each division a at least two Union Engineers for each block. The proposals of t Director were considered by the Staff Committee presided over by t Chief Secretary and the Staff Committee recommended the creation several posts. The Government, after consideration, ordered t

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creation of the following posts for a period three years or till t need therefor ceases whichever is earlier:-

" (a) At the Panchayat Union level, 384 posts of additional Union Engineer in the rank of Assistant Engineer at the rate of one additional Union Engineer per Panchayat Union.

(b) At the Divisional level, 15 sub-divisions at the rate of one sub-division to each of the development division which do not have technical staff at present (viz Cuddalore, Krishnagiri, Lalgudi, Palani, Dharmapuri, Perambalur, Maduranthakam, Tiruttani, Uthamapalayam, Tiruchengode, Tiruvarur, Kulithalai, Paramakudi, Thenkasi & Udayarpalayam). "

Clause-5 of the said Order makes it clear that the additional technic posts sanctioned would be filled up on deputation / by transfer service basis for a period of three years on temporary basis. further says that the staff for those posts would be drawn from vario Departments, viz., Highways and Rural Works, Public Works Departmen Agricultural Engineering, TWAD Board and other allied Technic Departments. The Government Order also makes it clear that since t existing staff particularly technical personnel in the R.D. Departme are insufficient and inadequate, considering the need for execution various centrally sponsored schemes, it was decided to have a separa wing, for which, several technical personnel are needed. It furth shows that in order to cope up with the work and urgency, t Government authorised the R.D. Department to borrow suitable personn from various departments including TWAD Board for a period of thr years on temporary basis. In other words, the deputation is for period three years and the same is on temporary basis.

The next Government Order very much relied on by t petitioners is G.O. Ms. No.102, R.D. Department, dated 25.05.1998. is stated therein that, considering various aspects, 209 posts in t category of Block Engineers/Assistant Engineers would be earmarked be filled up by promotion from the feeder categories of Overseers a Junior Draughtsmen. It is further stated that this route would be op to them only after they exercise their option and are permanent absorbed in the R.D. Department. The said Government Order furth shows that this number of 209 would be out of the 384 posts of Blo Engineers suggested in item -1 to be earmarked for Engineers fr Highways Department. In those circumstances, the Government direct the Director, R.D., to explore the possibility and report to t Government of permanently absorbing A.Es. from other Technic Departments, giving them 1:1 weightage for the service already put by them in their respective Departments. Thus, the above G.O. makes clear that the Director was asked to find out possibilities permanently absorbing the AEs from other technical departments and al to submit his report regarding the feasibility / acceptability. other words, the Government has not absorbed all those engineers fr the technical departments including the personnel from TWAD Board

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the R.D. Department.

No doubt, in the proceedings, dated 17.3.1999, deputationis including the personnel from the TWAD Board, working in the posts Additional Union Engineer / Assistant Engineers (RD) in R. Department, who opted for permanent absorption in the R.D. Departme were ordered to be absorbed permanently subject to the condition pending framing of ad hoc / service rules or Tamil Nadu Rur Development Engineering Service / Tamil Nadu Rural Developme Engineering Subordinate Service by Government in R.D. Departmen However, on receipt of the above communication, TWAD Board convey their inability to accept and, in their letter dated 15.04.1999, t Managing Director informed the Director of R.D. Department, stati that the proposal for the permanent absorption of A.Es deputed fr TWAD Board to R.D. Department based on their option is not acceptab to the TWAD Board. In the same communication, the M.D. reiterated th the services of the A.Es. are essentially required for the current ye works in the TWAD Board and requested that the A.Es be reverted to TW Board immediately. Based on the above communication of the TWAD Boar the Director, R.D. Department, in his proceedings dated 02.07.199 after examining the issue of absorbing Engineers from other Departmen working on deputation in the R.D. Department in detail and finding th the Block Engineers / Junior Engineers / Assistant Engineers fr Highways and Rural Works Department come under the purview of TNPS cancelled the permanent absorption of all 204 Block Engineers / Juni Engineers / Assistant Engineers and 129 Assistant Engineers belongi to other Technical Departments.

On 25.01.2000, the Government, in G.O. Ms. No.15, R. Department, framed ad hoc rules for the posts of Executive Enginee Assistant Executive Engineer and Assistant Engineer, (vi Notification-IV) under Article 309 of the Constitution of India. T said Rules came into effect from 26.09.1997. We are concerned abo Rule-3, which speaks about 'Appointment',

> " 3. APPOINTMENT (1) Appointment to the post shall be made by
>
> (a) direct recruitment
>
> (b) recruitment by transfer from Overseer in the Rural Development Department
>
> (c) The ratio for appointment to the post by direct recruitment - and recruitment by transfer shall be 1:1"

Admittedly, there is no provision for taking deputationists for filli up the posts in the R.D. Department. Since the said aspect is und challenge by way of W.P. No.33503 of 2006, we will consider it at later point of time.

13-A. Inasmuch as the deputationists stoutly deny their stat of service with the R.D. Department 'on contract basis', it necessary to refer to the proceedings of the Director of R.D., dat 28.12.2001, which refers to G.O. Ms. No.263, R.D. Department, dat

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27.12.1996, and Annexure-II appended thereto, containing terms deputation by the Director of R.D.,

" Annexure-II

Terms and conditions for appointment of personnel from the State Public Sector Undertakings/Boards in Government Services on contract basis under General Rule 11 of the Tamil Nadu State and Subordinate Service (Vide Govt. Lr. No.1569/BPE/92-1 Finance (BPE) Dept., dt. 15.2.93 and Govt.Lr.No.2749/BPE/96-1 Finance (BPE) Dept., dt.9.12.96)

i) The contract appointment will be for a period of 3 years from the date of relief from the Corporation/Board.

ii) While on Contract appointment, he will draw pay and allowances as applicable to the post held by him in his parent Organisation, viz., Corporation/Board.

iii) The Government shall recover every month the Employees Contributory Provident Fund subscription from the pay of the employees on Contract appointment at the rate specified by his parent organisation and remit it to that foreign body. It is only that lending organisation, which has to make an equal amount of employer's contribution and no contribution in this regard will be made by the Government. "In respect of employees of statutory Boards, where a pension scheme is available, the pension contribution shall be met by the statutory Boards themselves in the event of appointing such employees in Government Service on contract basis under General Rule 11 of the Tamil Nadu State and Subordinate Service" (amended vide Govt. Letter No.2749/BPE/96-1, Finance (BPE) Dept., dated 09.12.1996.

iv) The Government shall pay direct to the employee concerned an amount as one time compensatory allowance equivalent to the bonus admissible at the rates as per the payment of Bonus Act as and when paid by the parent Organisation to its employees provided that at the time of payment of bonus, the employee continued to serve in Government on contract basis. The expenditure on this will be on service share basis for the accounting year between the Government and the foreign body concerned. In such cases, during the contract period, the employee will not be eligible for any other exgratia payment, if any, allowed to the Government employees like pongal gift.

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v) Government also will not pay any contribution towards gratuity. The gratuity contribution shall be borne only by the lending Corporation/Board concerned for the period of contract service.

vi) The employee on contract basis shall be deemed to be a member of the parent organisation for the purpose of the disciplinary rules, under the Service Rules of the parent organisation concerned. Notwithstanding the fact that his services are placed at the disposal of the Government, if he commits any act of omission or commission which make him liable to the penalty specified in the said rules, the parent organisation under whom he is serving at the time of omission or commission of such act shall be competent to initiate the disciplinary proceedings against him and to impose on him such penalties specified in the relevant rules and the Government under whom he is serving at the time of institution of such proceedings shall render all reasonable facilities to the parent organisation for the institution and conduct of such proceedings.

Vii) The Government shall give leave salary contribution at the termination of the contract period for the actual leave earned during the contract service, after deducting the actual Earned Leave availed during the contract service period. If the Earned Leave applied for in a year while on contract service for exceeds the leave that would accrue for the tenure period mentioned in the contract appointment, then for such excess days of Earned Leave, the foreign body shall bear the liability by reimbursing the amount to Government, first bearing entire leave salary for the Earned Leave period by the Government.

Viii) The employees shall be allowed to surrender Earned Leave for a maximum of 15 days for each year of contract service, subject to the condition that he has that many days of leave earned after deducting the Earned Leave availed during the contract service.

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ix) Regarding reimbursement of medical expenditure, it may be left to the option of the employee on contract service to get his medical expenditure reimbursed either from Government or from the Corporation, subject to the stipulation that the option once exercised will be final for the entire contract service.

Sd/-
For Director of Rural Development."

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The above terms and conditions are rather self-speaking about t status of the petitioners that their services with the R.D. Departme are only on 'contract basis'.

14. According to Mr.Sanjay Mohan, Ms.Vaigai, learn counsels; and Mr.V.K.Muthusamy, learned Senior Counsel, in view of t fact that the petitioners came to R.D. Department on deputation fr TWAD Board and that their request for regularisation in the R. Department was accepted and proper orders were passed by the Directo R.D. Department, with the consent of the TWAD Board, the responden are not justified in reversing their said decision. According to the on the principle of 'Legitimate Expectation', the respondents ought have let them to continue in the R.D. Department along with oth Engineers. They also contended that the respondents are estopped fr repatriating all these petitioners to their parent Department, viz TWAD Board, as they are entitled to permanent absorption in the R. Department. Inasmuch as we have already referred to the factu details in the earlier paragraphs, let us consider the issue involv with reference to various decisions of this Court and the Supre Court.

14(1). Learned Counsels for the petitioners/deputationis relied on a decision of the Apex Court reported in AIR 2003 SC pa 1713 (Chanchal Goyal Vs. State of Rajasthan) in support of the argument on the principle 'legitimate expectation'. It is relevant extract paragraph Nos.16 to 18 in this regard,

> " 16. The basic principles in this branch relating to 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment: or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a

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benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class or persons.

17. The principle of a substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (De smith, Administrative Law, 5th Ed.) (Para 13.030). (See also Wade, Administrative Laws, 7th Ed.) (pp.418-419). According to Wade, the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in Attorney General for N.S.W. v. Quin (1990) 93 ALL E.R. 1 (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR (4th 297, but favoured in Ireland: Canon v. Minster for the Marine 1991 (1) I.R. 82. The European Court goes further and permits the Court to apply proportionately and go into the balancing of legitimate expectation and the Public Interest.

18. Even so, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation. ...."

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We find that what was observed in the above decision was, f
legitimate expectation to arise, the decisions of the administrati
authority must affect the person by depriving him of some benefit
advantage which either he had in the past been permitted by t
decision maker to enjoy and which he can legitimately expect to
permitted to continue to do until there has been communication to hi
the same rational grounds for withdrawing on which he has been given

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opportunity to comment or he has been given an assurance that they wi not be withdrawing without giving him first an opportunity.

Coming to the case on hand, insofar as the TWAD Boa Engineers/deputationists are concerned, they cannot claim legitima expectation or applicability of the above Supreme Court decision f the reason that their appointment order itself was either 'on contra basis' or 'deputation' for a specified period and they were we informed that their absorption was subject to framing of ad hoc rule When they have no legal right to claim absorption, the principle legitimate expectation cannot be invoked by them; therefore, the abo case law is not applicable to the facts and circumstances of the cas on hand.

14(2). Reliance is made on the decision reported in AIR 19 SC 2779 (National Buildings Construction Corporation vs. S.Raghunath and others), wherein, it was held that the doctrine of 'legitima expectation' has been developed both in the context of reasonablene and in the context of natural justice.

In the above decision, Their Lordships of the Supreme Cou have specifically pointed out that the question whether the expectati and the claim are reasonable or legitimate is a question of fact each case. Not stopping therewith, it was also observed that su question has to be determined not according to the claimant perception but in larger public interest. Further, the point f consideration therein was as to whether the deputationists we entitled to foreign allowance on the original basic salary or on t salary as revised on account of the recommendations of the IV P Commission. On consideration, the Apex Court dismissed the pl relating to foreign allowance.

In the case on hand, the deputationists, who were informed th they were taken on deputation basis or contract basis, were fully awa that their rights are only with the TWAD Board and not in the R. Department and they were informed as early as on 02.07.1999 that th cannot be absorbed in the R.D. Department. Having not challenged t said order for more than 6 years, the TWAD Board Engineers now cann be permitted to raise a plea of legitimate expectation on the grou that the deputation allowance was stopped to them. At best, they c only claim deputation allowance for all these years and no other rig over the R.D. Department. Hence, the decision relied on is not helpf to the petitioners.

14(3). In Union of India vs. Hindustan Development Corporati (AIR 1994 SC page 988), Their Lordships of the Supreme Court, quoted passage explaining the scope of 'legitimate expectation' fr Halsbury's Laws of England, which reads thus:-

> " 81. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way but an administrative authority even though he has no legal right in private law to

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receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice."

After discussing the fact regarding expectation, it was observed,

" A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense. " .....

" It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. The court should restrain themselves and restrict such claims duly to the legal limitations. "

Coming to the cases on hand, inasmuch as the TWAD Board Engineers not have legal right to claim absorption and when the Government a the Managing Director of TWAD Board have taken a decision not entertain absorption, legitimate expectation cannot be invoked to t facts of the present case. To invoke the principle of legitima expectation, there should be a legal right. Thus, the decision reli on cannot be applied to the cases on hand.

14(4). The following conclusion in Rameshwar Prasad v Managing Director U.P. Rajkiya Nirman Nigam Limited (AIR 1999 SC 344 was pressed into service,

" 17. In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No.1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary, but is coupled

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with the duty not to act arbitrarily, or at whim or caprice of any individual. ..."

On going through the above referred decision, we find that it has be clearly held therein that an employee, who is on deputation, has right to be absorbed in the service where he is working on deputatio however, in some cases, it may depend upon the statutory rules to t contrary. If rules provide for absorption of an employee on deputati then such an employee has a right to be considered for absorption accordance with those Rules. It was further held that whether t deputationists should be absorbed in service or not is the poli matter, but, once the policy is accepted and rules are framed for su absorption, there must be justifiable reasons for rejecting application. As far as the present cases are concerned, t Service Rules of R.D. Department do not provide for absorption employees, who are on deputation and, in fact, under the method appointment, there are only two modes, ie., one by direct recruitme and the other by transfer of service of certain specific categorie Therefore, this decision also is not applicable to the cases on hand.

14(5). Reliance was also placed on the decision reported AIR 2003 SC 43 (P.Tulsi Das vs. Govt. of A.P.), wherein, it w observed that, in the absence of Rules under Article 309 of t Constitution in respect of a particular area, aspect or subject, it w permissible for the State to make provisions in exercise of i executive powers under Article 162 which is co-extensive with i legislative powers laying conditions of service and rights accrued or acquired by a citizen would be as much rights acquired under law a protected to that extent. The facts involved in the above case law we regarding the validity of Andhra Pradesh Educational Service Untrain Teachers (Regulation of Services and Fixation of Pay) Act, 1991, a the Supreme Court had upheld the right of those who were appointed SGBT teachers to be entitled to the pay scales of School Assistants f the period prior to the said Act. The said decision is in no w applicable to the facts of TWAD Board Engineers since the impugn rules have retrospective effect and there is no right accrued on t deputationists to claim absorption.

14(6). Next decision, that was pressed into service on t concept of deputation, is the one reported in AIR 1999 SC 1948 = 19 (4) SCC 659 (Umapati Choudhary vs. State of Bihar). Before commenti upon the applicability of this decision to the cases before us, it relevant to refer to the contents at para No.9 of the decision,

" 9. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationists) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on

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deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand, all the three conditions were fulfilled."

In the above case law referred, the University, which was the pare department or lending department, the Bihar Sanskrit Education Boar ie., the borrowing authority and Umapati Choudhary, the deputationis had all given their consent for deputation of the appellant and for h permanent absorption in the establishment of the borrowing Departmen Therefore, this decision is in no way supporting the case of t petitioners as in their cases, neither the lending authority nor t borrowing authority has given any consent/willingness for permane absorption of the deputationists.

14(7). In the decision reported in AIR 1979 SC 621 (Motil Padampat Sugar Mill vs. State of Uttar Pradesh), the Doctrine Promissory Estoppel has been discussed and it was held that the tr principle of Promissory Estoppel seems to be that where one party h by his words or conduct made to the other a clear and unequivoc promise which is intended to create legal relations or effect a leg relationship to arise in the future, knowing or intending that it wou be acted upon by the other party to whom the promise is made and it in fact so acted upon by the other party, the promise would be bindi on the party making it and he would not be entitled to go back upon i if it would be inequitable to allow him to do so having regard to t dealings which have taken place between the parties and this would so irrespective of whether there is any pre-existing relationsh between the parties or not.

In the present cases, the TWAD Board Engineers were nev given any promise that they would be absorbed after 3 years of t deputation nor had they acted upon any such promise. In fact, even 17.3.1999, they were issued with an absorption order by the Director R.D. subject to framing of the ad hoc rules and this order too w cancelled within 4 months. Hence, the principle of promissory estopp cannot be applied to. Neither the Government nor the M.D., TWAD Boar had given any assurance that the petitioners would be absorbed in t R.D. Department. The TWAD Board Engineers have not suffered a service rights in their parent Department due to any such promise ma and, therefore, the principle laid down in the above decision is n applicable to the facts of the present cases.

14(8). Coming to the decision relied on by the petitione reported in 1999 (8) SCC 99 (Nagpur Improvement Trust vs. Yadao R Jagannath Kumbare and others), it is seen that the point consider

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therein was, in the absence of any statutory rule governing servi conditions of the employees, executive instructions or decisions tak administratively would operate in the field and appointments promotions can be made in accordance with such executive instructions.

The above said decision is also not applicable to the cases hand for the simple reason that the Service Rules have been framed G.O. Ms. No.15, R.D. Department, dated 25.01.2000, with effect fr 1997 and as per the Service Rules, deputationists cannot cla absorption. Executive instructions issued in G.O.102, R.D. Departme dated 25.5.1998, have become null and void after framing of the ad h rules.

14(9). Insofar as the decision in Ramasanjeevayya vs. State Mysore (1969 (2) LLJ 169) is concerned, it was a case, where t petitioner therein relinquished his promotion in the Secretariat a opted to remain in the department of Civil Supplies foregoing h promotion. The Division Bench held that the petitioner was permanent transferred to Civil Supplies Department and therefore, the Governme could not repatriate him.

The facts of the above case are completely different from th of the cases on hand as the deputationists here had not relinquish any promotion in their parent department. But, in fact, they we juniors in TWAD Board, who were promoted and posted in the R. Department. Now, the seniors to them in TWAD Board have giv willingness to be posted in the R.D. Department to gain the sa promotion. Due to these administrative difficulties, the M.D., TW Board, had expressed that none of the TWAD Board Engineers be absorb in the R.D. Department. Hence, this decision also cannot be applied the case of the petitioners.

15. In addition to the above case laws, Mr.V.K.Muthusam learned Senior Counsel, very much relied on a Division Bench decisi of the Calcutta High Court reported in 1985 (1) SLR 257 (West Beng Industrial Development Corporation vs. West Bengal Industri Development Corporation Employees Union), wherein the Bench had dea with a case where one Anil Chandra Chattopadhyay was posted as Speci Officer, Petro Chemical Projects, on deputation from Home (P&A Department, Government of West Bengal. He was further posted as Chi Administrative Officer in addition to his duties as Special Office Petro Chemicals.

We find that, in the above referred case, the borrowi department, the lending Department, the deputationists and the Chi Minister of the State had all given consent for absorption of the sa Anil Chandra. Coming to the present cases, neither the M.D., TW Board, agreed for absorption as on 27.12.2004 nor the Government / R. Department agreed therefor and the service rules also do not perm absorption of TWAD Board Engineers in the R.D. Department. In su circumstances, the case law cited is not useful to the petitioners.

For the same reasons, another Division Bench decision, viz., 19

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(5) SLR 426 (Director of Administrative Training v. S.C. Misra relied on by Mr.V.K.Muthusamy, learned Senior Counsel, cannot be ma applicable to the cases on hand.

16. Now, we shall consider various decisions and submissio made by Mr.C.Selvaraju and Mr.R.Thiyagrajan, learned Senior Counse and Mr.R.Viduthalai, learned Advocate General.

16-A. In the decision reported in 2001 (10) SCC 520 (Union India vs. S.N.Panikar), the facts show that the appellant was the Uni of India and the appeal was filed as against the order of the Centr Administrative Tribunal dated 24.04.1992 passed in O.A. No.1001 1991. By the impugned order, the Tribunal directed the Uni Government to absorb the respondent in the post of Deputy Direct (Development) with effect from the date when the last period of h deputation formally ended, ie., with effect from 01.01.1990. It further seen that the post of Deputy Director could be filled up on by direct recruitment under the relevant Recruitment Rules framed und the Proviso to Article 309 of the Constitution of India. Rule confers powers of relaxation on the Central Government and su relaxation has to be given for reasons recorded in writing and consultation with the Union Public Service Commission. The responden who was serving in the Department, was sent on deputation after d consultation with UPSC. But, after the period of deputation was ove when the Department requested UPSC for further continuance of t respondent on deputation, UPSC refused the request of the Uni Government and informed the Union Government that UPSC has not agre to the extension of period of deputation in the post of Depu Director. The respondent thereafter approached the Tribunal which ca to the conclusion that the deputation itself having been made by t Union Government in consultation with the UPSC in relaxation of t provisions of the Recruitment Rules providing for direct recruitmen the applicant must be held to have a right to hold the post accordi to the terms and conditions of appointment and he was not an ad h appointee and the respondents were not right in terming his appointme as ad hoc. Disagreeing with the said conclusion, the Hon'ble Supre Court has observed as follows:-

> " ..... This conclusion of the Tribunal is contrary to the service jurisprudence and to the relevant rules under which the respondent was sent on deputation to the post of Deputy Director (Development). The further conclusion of the Tribunal that regardless of whether the formal order states it or not the decision to fill up the post by transfer on deputation should be deemed to be a decision taken in relaxation of the Recruitment Rules as provided in Rule 6, is also erroneous. The power of relaxation was exercised by the Union Government in consultation

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with UPSC for a limited purpose, namely, to fill up the post by taking somebody on deputation which otherwise required to be filled up only by direct recruitment. In that view of the matter, a deputationists cannot claim either a right to the post in question nor can he claim absorption on permanent basis to the post in question. ...."

In the above decision, the Supreme Court had categorically held th when the statutory rule does not provide absorption as one of t methods of appointment, there can be no right for the deputationists claim for absorption in the said post. The facts of the TWAD Boa Engineers are identical and, therefore, as per the principle laid do in the Supreme Court decision, all the writ petitions filed to cla absorption as a right are liable to be dismissed.

16-B. In U.P. Land Dev. Corpn. v. Amar Singh (2003 (5) S 388, the Hon'ble Supreme Court has held that when the work of t scheme had come to an end, the respondents were not entitled to cla regularisation of their services.

16-C. Heavy reliance was placed on the Division Ben decision of this Court in Writ Appeal No.2682 of 2003 etc., dat 23.12.2003. The writ petitioners/appellants approached this Court issue a writ of mandamus, directing the respondents to consider a absorb them in the Oil and Natural Gas Corporation Limited. They we sent on deputation with respondents-3 to 5. As per G.O. Ms. No.74 dated 24.06.1978, the deputation would be for a period of three yea and in special circumstances, it would be for four years. The questi before the learned single Judge as well as the Division Bench was as whether the appellants can claim as a matter of right to be in forei department and to be absorbed or are they be repatriated to the parent department. After considering the rival submissions and t decisions of the Apex Court, the Division Bench was of the view th respondents-1 and 2 made it clear that the appellants belonged to the service and they were sent only on deputation to respondents-3 to 5 a the said position is also not disputed. The Bench further observ that when the parent Department, viz., respondents-1 and 2, wanted recall or repatriate them, the same cannot be questioned or stalled the appellants. It further observed that repatriation of its employe by the parent department is a rule and allowing them to continue in t foreign department is only an exception. After finding that t appellants cannot challenge the action of respondents-1 and 2 repatriating the appellants, the Division Bench dismissed the appea We are in agreement with the view expressed by the Division Bench.

16-D. In State of Punjab v. Jagdip Singh (AIR 1964 SC 521 Their Lordships have observed that, where a Government Servant has right to a post or to a particular status, though an authority und

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the Government acting beyond its competence had purported to give th person a status which it was not entitled to give, one will not in l be deemed to have been validly appointed to the post or given t particular status; that, no doubt, the Government has used t expression 'deconfirming' in its notification which may be susceptib of the meaning that it purported to undo an act which was therefo valid; that the expression, however, must be interpreted in the lig of actual facts which led up to the notification; that those fac clearly show that the so-called confirmation by the Financi commissioner of Pepsu was no confirmation at all and was thus invali and that in view of this, the notification of October 31, 1957, cou be interpreted to mean that the Government did not accept the validi of the confirmation of the respondents and other persons who we confirmed as Tahsildars by the Financial commissioner, Pepsu. Applyi the principle laid down in the above decision, it is clear that right or claim can be made by the deputationists based on the ord dated 17.3.1999 which was passed without jurisdiction.

16-E. In the decision reported in 1976 (4) SCC 5 (G.Muniyappa Naidu v. State of Karnataka), after finding that the Cad and Recruitment Regulations recognised only two modes of recruitment the post of Senior Health Inspectors, viz., promotion from the cadre Junior Health Inspectors and deputation from the State Directorate Health Services and one half of the cadre was to be drawn from each these two sources, it was observed that no other mode of recruitme could be resorted to by the Corporation under the Cadre and Recruitme Regulations. It was concluded that it is difficult to see how in t face of the said provision, which has admittedly statutory effect, t posts of Senior Health Inspectors could be filled in by absorption deputationist Senior Health Inspectors from the Karnataka State Civ Service.

Following the principles laid down in the above decision, the cla for absorption has to be rejected inasmuch as the ad hoc rules do n permit the deputationists to be absorbed,.

16-F. In Ratilal B.Soni v. State of Gujarat (1990 (Supp) S 243), the Supreme Court has held that the appellants being deputation, they could be reverted to their parent cadre at any ti and they do not get any right to be absorbed on the deputation pos After holding so and finding no infirmity in the Judgment of the Hi Court, the Apex Court dismissed the appeal.

In the above decision, the Supreme Court upheld the decisi of the Gujarat High Court which had held that the deputationists had legal right to be absorbed in State Service unless the option accepted by the Government. The principles laid down in the abo decision are squarely applicable to the facts of the present cas since the option of the TWAD Board Engineers was neither accepted the M.D., TWAD Board, nor by the Secretary to Government, R. Department. Hence, as per the above Supreme Court decision, the TW

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Board Engineers have no right to claim absorption in the R. Department.

16-G. In the decision reported in 1996 (2) SCC 2 (Balakrishna Pandey vs. State of Bihar and others), the Apex Court h held as follows:-

> " 5. It is settled law that an employee on temporary promotion would continue to hold the lien in his substantive post until it is duly terminated. He cannot hold two substantive posts at the same time. Once it is concluded that the appellant is a deputationists working in the Directorate of SEP, his name was rightly not shown in the seniority list of that Department. Therefore, he continued to hold his lien and seniority as Junior Statistical Supervisor in the parent Department. On reversion, he came back to his post as a Junior Statistical Supervisor and in his own right he was promoted as SSA. Since the fifth respondent happened to be a permanent incumbent in the Directorate of SEP, he was promoted as SSA. When further vacancy in the higher ladder, viz., SRA, had fallen vacant, he was considered and promoted in that vacancy. Under those circumstances, the High Court is well justified in refusing to interfere with the matter and we do not find any justification warranting interference. "

In the above decision, the Supreme Court found that the appella therein was only a deputationist and cannot claim right to promotion the Transport Department and can have right only in the pare Department. Even though the appellant continued to be on deputation view of the interim directions of the Court, the Supreme Court advert to that he continued to hold lien in his parent Department.

In the present case also, though the TWAD Board Engineers, an interim order, continued in the R.D. Department since 2004, th continued to hold their lien with their parent department which is TW Board, hence, cannot claim absorption as a right.

16-H. Coming to the decision of the Apex Court in State Punjab and others vs. Inder Singh and Others (1997 (8) SCC page 372 it is relevant to refer to the conclusion with regard to the concept deputation in para No.18 of the said Judgment,

> " 18. The concept of 'deputation' is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent Department. Deputation is deputing

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> or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. ....."

In the above decision, the Supreme Court had not permitted the claim absorption where the respondents therein continued in the posts f nearly 20 years and in fact, directed to revert those who ha completed 20 years of qualifying service to their parent departmen The principle laid down in the above decision is applicable to t facts of the present case. The TWAD Board Engineers were sent deputation to R.D. Department from 1997 for 3 years and were revert back in 2004. They were continuing on deputation in view of t interim order of this Court and, as per the above Supreme Cou decision, they cannot claim absorption when the Rules do not perm their absorption in the R.D. Department.

16-I. In the decision reported in 2000 (5) SCC 362 (Kun Nanda vs. Union of India and another), the following conclusion relevant,

> " 6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationists for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationists cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. ...."

In the above decision, the principle relating to the position deputationists was settled by the Supreme Court by holding that the is no vested right for a deputationist to claim absorption in t borrowing department. In view of the principle laid down in the abo Supreme Court decision, there cannot be a mandamus compelling t Government to absorb the deputationists in the R.D. Department wh they have no vested right to claim absorption.

16-J. In the decision reported in 2001 (10) SCC 655 (Mahe Chand Bhargawa and others vs. Union of India and others), the ca before the Supreme Court was, the appellants/deputationists claim absorption in the Commercial Department while retaining their lien wi

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the Loco Shed and drawing wages therefrom. The Supreme Court held th the appellants did not acquire any right of absorption in t Commercial Department.

The principle laid down in the above Supreme Court decision applicable to the facts of the present case as the TWAD Board Enginee retained their lien in TWAD Board and are only on deputation terms the R.D. Department. Hence, the writ petitioners did not acquire a right to be absorbed in the R.D. Department.

16-K. In Mahesh Kumar K.Parmar & Others vs. S.I.G. Of Poli and others (2002 (9) SCC 485), the Apex Court has held that no mandam can be issued to the State Government requiring them to permanent absorb the deputationists. Hence, the position is made very clear the above decision regarding the plea for issuance of a mandamus favour of the petitioners.

16-L. In the decision reported in 2006 (4) SCC page (Secretary, State of Karnataka and others vs. Umadevi and others Constitution Bench of the Supreme Court has held that the High Cour acting under Article 226 should not, ordinarily, issue directions f absorption, regularisation or permanent continuance unless t recruitment itself was made regularly and in terms of t constitutional scheme; and that merely because an employee h continued under cover of an order of the court, under "litigio employment", he would not be entitled to any right to be absorbed made permanent in the service.

As per the Constitution Bench Judgment of the Supreme Cour this Court may not issue a mandamus, directing the Government to abso the TWAD Board Engineers who were not appointed through the TNPSC f the post of Assistant Engineer. The respondents, who were recruit through the TNPSC as Assistant Engineers, should not be deprived their promotions and other service rights by entertaining the relief TWAD Board Engineers, who were not appointed in accordance with t Rules to hold the post of Assistant Engineer in the R.D. Department.

17. Legitimate Expectation is an aspect of promisso estoppel. In the absence of an unequivocal promise by the compete authority, neither the doctrine of promissory estoppel nor legitima expectation can be invoked. (vide, - 1998 (7) SCC 66 (cited supra J.P. Bansal vs. State of Rajasthan - 2003 (5) SCC 134 ; Union of Ind vs. International Trading Co. - 2003 (5) SCC 437 ; 2006 (5) SCC 702 Kuldeep Singh vs. NCT Delhi).

In Dr. Rajinder Singh v. State of Punjab (2001 (5) SCC 48 and National Fertilisers vs. Somvir Singh (2006 (5) SCC 493), the Ap Court has held that mere proposal of absorption cannot be construed an order of absorption.

In the decision reported in 2006 (6) SCC 430 (R.S.Garg State of U.P.), the Supreme Court has held that members of t statutory corporation and those in government service form differe

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classes of employees. This is primarily because of the mode selection process adopted in each case. Even if they are broug together to one department temporarily on deputation, they cannot treated as a homogenous class as they trace their deputation independent sources. The AEs of TWAD Board are not appointed by TNPS The other Departments do not include statutory corporations like t TWAD Board.

18. Learned Advocate General, in support of his contenti that, in the absence of specific Rules, deputationists from TWAD Boa cannot compel anyone including the Director, R.D. Department Government to regularise them in the R.D. Department itself, very mu relied on the following proposition in the decision reported in 20 (5) SCC 482 (cited supra),

> " 7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution. "

In the above decision, the Supreme Court put in clear terms that me communication of the recommending authority to consider the case of t deputationists for absorption and for passing appropriate orders competent authority cannot give rise to legitimate expectation a promissory estoppel.

19. The above proposition has been considered and approved a subsequent decision reported in Union of India v. V.Ramakrishn (2005 (8) SCC 394). The following conclusion of Their Lordships paragraph No.32 is relevant,

> " 32. Ordinarily, a deputationists has no legal right to continue in the post. A deputationists indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. ..."

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In G. Nagendra vs. State of Karnataka (1998 (9) SCC 439), t Supreme Court has held that rules framed under Article 309 of t Constitution can be given retrospective effect.

20. In the light of the Government Orders, Board Proceedings, terms & conditions of deputation and the legal principl enunciated by the Supreme Court, let us summarise our conclusions wi regard to the position of the writ petitioners/TWAD Board Engineer their right to claim absorption and whether mandamus compelling t Government to absorb the TWAD Board Engineers in the R.D. Departme can be issued,

First of all, the petitioners/deputationists have no leg right vested in them so as to invoke the principles of 'legitima expectation', 'promissory estoppel', etc. and claim absorption as matter of right. Though the petitioners struggle to substantiate the case by stating that initially there was a proposal for their permane absorption in the R.D. Department, such position would have definite stood as a strong factor to take a decision in their favour had t impugned Rule fell in such lines and brought them under its scope appointment. Apparently, there was a stipulation that the absorpti would be subject to the framing of ad hoc rules, whereby, it was ma clear that their absorption would depend on the provisions inscribed the Rules to be framed. In other words, the provisional absorption w conditional/contingent and not absolute. Surprisingly, the petitione did not question their absorption subject to the framing of ad h rules. Similarly, when they were informed as early as on 02.07.19 that they cannot at all be absorbed in the R.D. Department, they d not choose to challenge said order. That being so, at this point time, when Ad hoc rules have been framed, which do not provide f absorption and make the orders issued on 25.05.1998 as null and voi they cannot at all, in the light of the settled legal position, cla for the relief asked for by them. Further, the petitioners themselv know well that services on contract basis in accordance with Rule-11 the State and Subordinate Service Rules can be terminated by t Government as and when the need for such services ceases. T petitioners cannot take advantage of the order passed witho jurisdiction by the Director, R.D. Department, inasmuch as, admittedl the Government is the only authority to decide in the matter relati to permanent absorption. It is the well known principle that if executive instruction is contrary to the statutory/service rules, t rules will prevail and not the executive instructions. Further, TW Board is an undertaking of the Government of Tamil Nadu a appointments made by it are outside the purview of TNPSC, whereas, t post of A.E. in the R.D. Department comes within the purview of t TNPSC, that being so, the deputationists, who were not recruit through TNPSC and who rendered services in the R.D. Department ' contract basis' and retain their lien with TWAD Board, cannot claim f absorption. As adverted to already, the concept of deputation

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consensual and involves a voluntary decision of the employer to le the services of his employee and a corresponding acceptance of su services by the borrowing employer. It also involves the consent the employee to go on deputation or not. Here, the chain of consent broken and not complete amongst the TWAD Board, R. Department/Government and petitioners, in that, the TWAD Board declin to give consent; R.D. Department withdrew its earlier proposal f absorption; and the ad hoc rules expelled the petitioners from the zo of consideration for absorption/appointment; hence, with the me aspirations of the deputationists, nothing can be done, for, legitima expectation can be justified if its edifice is built with the sancti of law.

Another aspect of the matter is, by not getting permane absorption in the R.D. Department, they cannot complain prejudi because the doors of their parent department are not closed for them view of the continuance of their lien therewith, with all applicab allowances. Thus, in the absence of any statutory rule, regulation order, having the force of law, to trace the right and claim of t deputationists for permanent absorption in the R.D. Department, we c not close our eyes to the propounded principles established by the Ap Court, which cover aptly the issue involved, and issue mandam compelling the Government to absorb the deputationists.

21. Attacking the validity of the impugned Rules framed G.O. Ms. No.15, R.D. Department, dated 25.01.2000, Mr.A.L.Somayaj learned Senior Counsel, put forth the following contentions,

(a) The ad hoc rules issued for the post of A.E. excluding t deputationists from TWAD Board as one of the methods of appointment arbitrary, illegal and violative of Articles 14 and 16 of t Constitution of India.

(b) The impugned rules operate viciously against t deputationists who were appointed long before the issue of rule hence, to the extent of non-inclusion, the Rule is bad in law.

(c) The impugned rules, giving retrospective effect fr 26.09.1997, thereby affecting the acquired right to continue in t R.D. Department, are arbitrary and illegal.

(d) denial of absorption in the R.D. Department under the gui of ad hoc Rules affect their legitimate expectation.

(e) A section of employees, viz., Union Overseers fr Highways Department were given the relief of absorption in G.O. M No.102 and denial of the same relief to the deputationists from TW Board is illegal and offends Articles 14 and 16 of the Constitution India.

In support of the above contentions, Mr.A.L.Somayaji relied the following decisions,

(a) 1975 (4) SCC 754 (Superintendent and Remembrancer of Legal Affairs vs. G.K.Navalakha)
(b) 1969 (II) LLJ 169 (cited supra)
(c) 1996 Law Weekly Page 78 (Commissioner of Civil

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Supplies, Madras, The v. P.Annamalai)
(d) AIR 1987 SC 415 (T.R.Kapur v. State of Haryana)

It is not in dispute that the petitioner in W.P. No.33503 of 2006 a others are deputationists from TWAD Board and they are working in t R.D. Department. It is also true that initially an order of absorpti was made by the R.D. Department. Subsequently, in view of the sta taken by the M.D., TWAD Board, the order absorbing them was cancelle Thereafter, by way of G.O. Ms. No.15, ad hoc rules were framed. In t Rules, the deputationists were not made eligible for appointment in t R.D. Department.

Para No.3 of the Rules deals with the method of appointme and it provides that the post of A.E. can be filled by (a) dire recruitment; (b) recruitment by transfer; and (c) the ratio f appointment to the post by Direct Recruitment and Recruitment Transfer shall be 1:1. The above provision makes it clear that t Rules do not take in the deputationists under its method appointment. According to the petitioner, non-inclusion of t deputationists in the method of appointment though they have be working for the development of the Engineering Wing in the R. Department violates Article-14 of the Constitution. Service Rul have overriding effect on G.O. Ms. No.102, R.D. Department, dat 25.05.1998, which is only an executive Order. Further, it is broug to our notice that the post of Assistant Engineer with same pay a allowance is readily available to the petitioner and others in the TW Board ie., their parent organisation. It is also brought to our noti that the direct recruitment of A.E. in R.D. Department was commenced early as in September 1997 itself when the petitioner and others we working on contract basis. They do not have any service rights as p Rule 11 of the State and Subordinate Service Rules. Admittedly, t petitioner and others are not Government employees under the provisio contained in Fundamental Rules. It is the specific stand of t Government as well as the TWAD Board that the petitioner and othe were employed 'on contract basis' in accordance with the Rule-11 of t State and Subordinate Service Rules and can be terminated by t Government when the need for his services ceases. As observed by t Supreme Court in Kunal Nanda vs. Union of India (AIR 2000 SC 2076), t petitioner and others being deputationists have no legal right to g absorbed in the borrowing Department. Their absorption in the R. Department is not possible as per Service Rules. As rightly point out, if the plea of the petitioner and others is conceded, it wi amount to inflicting gross injustice to the unemployed engineeri graduates and who are waiting for recruitment through TNPSC. As stat earlier, the post of Assistant Engineer with the same Pay a Allowances is readily available to the petitioner and others in the parent Organisation.

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Though learned Senior Counsel appearing for the petition questioned the validity of the ad hoc rules as tainted wi arbitrariness and violative of Articles 14 and 16 of the Constitutio in view of the various factual aspects peculiar to the cases on han which we have adverted to in the course of the Judgment, and t settled legal position that the Courts should not interfere with t executive/legislative decisions except to examine the action accordance with law and to determine as to whether the legislature executive has acted within the power and functions assigned under t constitution; various points raised by him in this regard have to rejected in toto. To the executive decision for absorption subject framing of ad hoc rules, the petitioner and others subject themselves, knowing well that they are bound by the outcome of the sa rules; hence, they cannot allege unconstitutionality or arbitrarine when the Rules excluded them from the purview of consideration f appointment. The impugned Rules passed; sifting the non-government employees, whose parent department is an autonomous Board, after taki into consideration various aspects including the initial reluctance the part of the Board in sparing their employees with the R. Department on the ground of dearth of hands and apprehension setbacks in their activities; cannot at all be said to be offendi Articles 14 and 16 of the Constitution. After all, whenever the services are required by the parent Department, they have to leave t borrowing department where they are posted on deputation/contract bas only on public interest. Inasmuch as the Constitution clear circumscribes the areas of legislative power and judicial power, no can encroach or dominate upon the field occupied by the other. repeatedly pointed out, this Court has its own self-imposed limits a any deviation would amount to transgressing into the domain of t executive.

22. Insofar as the contention relating to discrimination a different treatment for A.Es. from TWAD Board, it is true that some the personnel working in the Highways Department as deputationists the R.D. Department were regularised. It is not in dispute th Highways Department is a wing of the Government and appointments a being made as per their Service Rules by following the procedure. other words, all appointments are being made by the TNPSC by calli for a list of eligible persons from the Employment Exchang Admittedly, such procedure is not in vogue in the appointment of AEs the TWAD Board. In such circumstances, merely because some of t Engineers in the Highways Department were regularised, it cannot cited as a precedent even in the case of TWAD Board Engineers. In t decision reported in 1990 (2) SCC 707 (Mallikarjuna Rao and others v State of Andhra Pradesh and others), the Hon'ble Supreme Court has he as follows:-

> " 11. ... It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive

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in respect of the sphere which is exclusively within the domain of the executive under the Constitution. ....

12. .....

13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India. "

In the decision reported in 2003 (2) SCC 632 (P.U.Joshi vs. Accounta General), the following conclusions are relevant,

" 10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of

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> service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. "

The above decisions of the Supreme Court make it clear that the pray of the TWAD Board Engineers to amend the Rules in such a manner as include the deputationists as one of the methods of appointment cann be granted by this Court and no Court can interfere with the exclusi discretionary jurisdiction of the State. Such being the position a in view of the fact that the personnel from the Highways Departme stand on a different footing, the TWAD Board Engineers cannot ple discrimination.

23. Though an argument was projected that the Rule cannot made applicable retrospectively, it is settled law that while frami the Rules, the Government is free to fix the relevant date from whi the same shall come into force. Though it was argued that the ad h rules take away the vested rights of the Assistant Engineers, inasmu as there is no specific Rule enabling the R.D. Department to absorb t Assistant Engineers from the TWAD Board, and even in the ad hoc Rul framed, there is no provision for absorption, the contrary argument the learned counsel appearing for the petitioners is liable to rejected. Though absorption was made by the R.D. Department within short period, in view of the stand taken by the Parent Departmen viz., TWAD Board, that their services are needed by the TWAD Board, t order absorbing them in the R.D. Department was withdrawn by t Director. As pointed out earlier, inasmuch as the petitioners have right to ask for absorption and in view of the fact that very same po with same pay and allowances are available in their parent Departme viz., TWAD Board, the challenge relating to validity of the Rules f not providing a clause for appointing them in the R.D. Departme cannot be countenanced at all. Further, as held by the Supreme Cou reported in 1998 (9) SCC 439 (cited supra), it is not correct to s that the rules framed under Article 309 cannot be given retrospecti effect. Exclusion of the deputationists in view of their distin identity from the regular Government servants and retrospecti operation of the impugned rules framed under Article 309 of t Constitution cannot be assailed as violative of Articles 14 and 16 the Constitution. While considering the question as to wheth retrospective operation prescribed by the rules amounted contravention or infringement of the individuals' rights, the Court h

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to take into account all the relevant and surrounding circumstances a in that connection, test of the length of time covered by t retrospective operation, by itself, cannot necessarily be a decisi test. To find out whether the impugned rule with retrospecti operation is reasonable and not violative of any constitution provisions, it becomes relevant to enquire as to how the retrospecti effect operates. First of all, the impugned Rules take in its sphe the individuals, who are exclusively government servants enter service through the TNPSC and governed by the relevant service rul applicable to the government servants. Secondly, the individua rendering their services in a foreign department on contract bas cannot compete with the insiders of that Department. Thirdly, t parent Department of the deputationists is an autonomous body and t entry thereto was not through TNPSC. Inasmuch as no vested right any deputationist is taken away by the retrospective operation of t Rules, the argument relating to alleged adverse impacts shall fall the ground.

24. In these circumstances, we find no merit in the Wr Petitions filed by the deputationists from TWAD Board and they a liable to the dismissed. We hold that the ad hoc rules framed in G. Ms. No.15, R.D. (E1) Department, dated 25.01.2000, with retrospecti effect are constitutionally valid and in accordance with the statuto provisions. The Writ Petition challenging the vires of those Rules also liable to be dismissed.

Insofar as the relief sought for by the Tamil Nadu Rur Development Engineers' Association in W.P. No.31510 of 2004, in view our discussion particularly in respect of the personnel from Highwa Department in Para No.22 and conclusion as seen from various paragrap relating to the absorption of the deputationists, it is for the R. Department to take decision and pass appropriate orders.

25. Net result, W.P. No.31510 of 2004 is disposed of with t above direction and all other Writ Petitions are dismissed. No cost Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary, Rural Development Department,
Fort St. George, Chennai-9.

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2. The Director of Rural Development Panagal Buildings, IV Floor, Saidapet, Chennai-15.

3. The Managing Director, T.N. Water Supply and Drainage Board, Kamarajar Salai, Chennai 600 005.

4. The Secretary,
Personnel and Administrative
Reforms (P & AR) Department,
Fort St. George,
Chennai.

5. The Secretary,
Tamilnadu Public Service commission,
Government Estate, Anna Salai, Chennai.

6. The Director of Rural Development Chennai-15.

10 ccs to M/s. Sudharavi Associates,Sr. 5103
1 cc to Government Pleader, sr. 5268
1 cc to Mr. Srinath Sridevan, Advocate, Sr. 5366
1 cc to M/s. Sudharshana Sundar, Advocate, sr. 5434
3 ccs to Mr.K. Rajkumar, Advocate, Sr. 5453 & 5454, 5455
5 ccs to Mrs. Hema Sampath, Advocate, sr. 5546
1 cc to Mr.R. Syed Mustafa, Advocate, Sr. 5641

Writ Petition Nos.19401 to 19410/04, 20676 to 20681/04, 22268 to 22277/04, 31510 & 31561/04, 26807/05 and 33503 of 2006.

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